



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Twanna C,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Appeal No. 2024003198

Hearing No. 520-2022-00359X

Agency No. 63-2021-00068-D

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision, dismissing her complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., the Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d) et seq., and Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff et seq. For the reasons discussed below, we affirm the Agency's dismissal of the formal complaint.

ISSUES PRESENTED

Whether the Agency properly dismissed Complainant's EEO complaint.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

BACKGROUND

During the period at issue, Complainant worked as a Office Operations Supervisor at the Agency's Manhattan Area Census Office in New York, New York.

On December 11, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on sex (female), genetics, and in reprisal for EEO-protected activity when:

1. On February 5, 2020, Complainant became aware, from informal conversations with colleagues, that other employees were paid at an hourly rate of \$50.00 for performing the same duties as Complainant, who as paid \$29.50 hourly; and
2. On February 7, 2020, she was laid off two days after inquiring about the alleged pay disparity and requesting a pay increase equal to that of her colleagues performing the same duties.

On July 19, 2021, the Agency issued a final decision dismissing the complaint pursuant to 29 C.F.R. § 1614.107(a)(1), for failure to state a claim, and, in the alternative, pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact.

On August 16, 2021, Complainant appealed the Agency's procedural dismissal. On February 7, 2022, the Commission reversed the Agency's dismissal. The appellate decision further directed the Agency EEO investigator to clarify the bases of Complainant's complaint as well as additional bases, such genetic discrimination, on both claims. See EEOC Appeal No. 2022000014.

On March 7, 2022, Appellant provided declarations in response to the EEO investigator's inquiries about her claims. On July 1, 2022, Complainant filed a hearing request.² On July 7, 2022, the Agency provided Complainant its report of investigation and also notice of her right to request a hearing before an EEOC Administrative Judge (AJ).

² Complainant's hearing request preceded the Agency's issuance of the notice of hearing rights and report of investigation. Complainant had also two filed premature hearing requests in August 2021 that she later withdrew after having acknowledged them as erroneous.

On June 9, 2023, the Agency moved to dismiss Complainant's hearing request arguing that, based on her declarations within the report of investigation, Complainant had failed to state a claim. Complainant uploaded various documents without context and did not explicitly respond to the Agency's motion.

On April 12, 2024, the AJ assigned to the matter issued an order dismissing, with prejudice, the hearing request and the entire matter before the Commission.³

Complainant filed the instant Appeal, on April 22, 2024. After the Commission granted Complainant's request for an extension, Complainant filed her appellate brief on June 4, 2024.

CONTENTIONS ON APPEAL

On appeal, Complainant contended that her EEO complaint was "submitted because there was a wage difference, and I was laid off from employment, after I kindly asked that the difference be corrected."

In opposition to Complainant's appeal, the Agency restated its position that Complainant had failed to state a claim.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

The regulation at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that the Agency shall dismiss a complaint that fails to state a claim.

³ Essentially the AJ reinstated the final Agency decision of July 19, 2021.

The Agency shall accept a complaint from an aggrieved employee who believes that she has been discriminated against by the Agency because of a prohibited consideration or because of retaliation. 29 C.F.R. §§ 1614.103, 1614.106(a). The Commission's federal sector case precedent consistently defines an "aggrieved" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy under EEOC regulations. Diaz v. Dep't of the Air Force, EEOC Request No. 05931049 (Apr. 21, 1994).

Title VII Reprisal and Equal Pay Act Violations

Notwithstanding her appellate statements, Complainant's formal declarations within the report of investigation expressly disavowed her Equal Pay Act and reprisal claims for the reasons discussed below.

The Equal Pay Act prohibits discrepancies in pay on the basis of sex and not any other basis. 29 U.S.C §206(d)(1). When asked whether she believed male employees had received more money than her as an Office Operations Supervisor, Complainant stated: "No. I do not have that belief." Complainant confirmed that response with a supplemental declaration that: "My complaint is not an Equal Pay Act complaint." In order to state a valid Equal Pay Act claim, Complainant had to allege that a member of the opposite sex (male) was paid higher wages for equal work on a job which requires equal skill, effort, and responsibility, and which is performed under similar working conditions. Complainant simply did not do so.

Similarly, concerning reprisal, Complainant made declarations that undermined her claims. When the EEO investigator asked Complainant to explain her belief that she was terminated because she had questioned management about unequal pay, Complainant answered, "I do not have that belief, in regards to reprisal." The EEO investigator then requested that Complainant clarify what she believed prompted her termination, but Complainant maintained that "My complaint does not involve reprisal (retaliation)." In other words, Complainant has denied a that there was a nexus between her EEO-protected activity and adverse actions against her.

We find the aforementioned statements were fatal to Complainant's assertions that she was subjected to Equal Pay Act discrimination or Title VII retaliation.

Genetic Discrimination

Having denied that her claims were based on reprisal or sex-based pay disparity, Complainant has insisted that it was her “Predisposing Genetic Characteristic” that unlawfully motivated the Agency’s discriminatory actions against her. According to Complainant, she has a unique ability to read through pages, understand the context, and locate the answer to questions, within only a few seconds. However, GINA prohibits employment discrimination based on “genetic information” as opposed to genetic characteristics. Genetic information is defined as an individual's genetic tests, genetic testing of that individual's family members or the individual’s family medical history. 29 C.F.R. § 1635.3(c). Complainant's complaint contains no allegations about her genetic tests, genetic testing of her family members, or her family's medical history. Therefore, we also reject Complainant’s claim of a GINA violation. Buck S. v. U. S. Postal Serv., EEOC Appeal No. 2022003265 (June 30, 2022).

Here, we concur with the Agency in that Complainant has failed to state a valid claim under EEOC regulations. Upon review, the Commission finds that Complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim.

CONCLUSION

Accordingly, the Agency's final decision dismissing Complainant's complaint is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(f).


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by their full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

December 30, 2024
Date